**IN THE HIGH COURT OF BOMBAY AT GOA**

**MISCELLANEOUS CIVIL APPLICATION NO.** 448 **OF 2005**
**IN CROSS OBJECTION NO. 7 OF 1999**
**IN FIRST APPEAL NO. 67 OF 1999**

1. Ivo Oscar G. Pinto Soares,

2. Rui Francisco G. Pinto Soares, applicant no.2, through his constituted Attorney the applicant no.1. ..... Applicants.

Versus

1. The Executive Engineer, W.D. XX1, P.H.E., P.W.D., Fatorda, Margao, Goa, and

2. The Deputy Collector, and L.A.O. , Margao. ..... Respondents.

Mr. J. P. Mulgaokar, advocate for the applicants.

Mr. H. R. Bharne, Government Advocate for the respondents.

**CORAM : S. S. PARKAR J.**

**DATE : 10th August, 2005.**

**ORAL ORDER**

The application is made by the claimants seeking direction against the respondent- State for depositing the amount of interest at the rate of interest payable on Fixed Deposit in a nationalized Bank on the total amount of compensation of Rs.5,75,094/- which was payable to the applicants/claimants, in land acquisition

proceedings.

2. The present application has been made in the following circumstances:-

The applicants' land was acquired by the Government. Compensation was granted to the applicants at the rate of Rs.50/- per sq. mt. by the Land Acquisition Officer, which was enhanced by the Reference Court to Rs.146/- per sq. mt. The State filed appeal in this Court which was admitted on 12th July, 1999. In Civil Application No.94/99 taken out in First Appeal No.67/99, this Court had granted stay of the Award passed by the Reference Court on condition of the State depositing in this Court, the compensation awarded by the Reference Court, which was undisputedly deposited. The amount deposited by the State was a sum of Rs.5,75,094/- on 4th August, 1999. After the deposit of the said compensation in this Court, the amount was transferred to the Public Ledger Account. There were also cross-objections filed by the claimants. Ultimately the appeal of the State as well as the cross-objections were compromised before the Lok Adalat on 31st January, 2004 and the market value was fixed at Rs.125/- per sq. mt. with all statutory benefits.

3. Thereafter, the applicants filed Miscellaneous Civil Application No.170 of 2004 in this Court for withdrawal of the amount as per the settlement arrived at before the Lok Adalat. That application

was allowed and the sum of Rs.5,75,094/- was directed to be paid to the applicants aongwith interest accrued thereon. When the applicants approached the office of the High Court for receiving the amount of compensation, they learnt that the amount awarded in favour of the applicants and directed to be deposited in this Court was not invested in a nationalized Bank and, therefore, the said amount did not fetch any interest thereon. Therefore, the present application seeking direction against the State to pay the interest on the said amount as if it was invested in a nationalized Bank.

4. On behalf of the respondents affidavit of the Executive Engineer, Works Division XX1 (PHE), P.W.D., V. Santhanam dated 5th August, 2005 has been filed stating therein that the amount awarded in favour of the applicants by the Reference Court was deposited in this Court and, therefore, in view of the judgment of the Supreme Court in the case of ***Prem Nath Kapur & Anr. vs. National Fertilizer Corpn. of India Ltd. & Ors.*** [ (1996) 2 SCC 71], the respondents are not liable to pay the interest amount. Mr. Bharne, learned Government Advocate appearing for the respondents placed reliance on the aforesaid judgment and contended that since the respondents had deposited the amount in this Court their liability to pay statutory interest ceases.

5. On behalf of the applicants, Mr. Mulgaokar

contended that the respondents may be absolved from paying statutory interest as the amount awarded was deposited in the Court but their liability to pay interest in equity does not cease. Reliance is placed by him on the judgment of the Supreme Court in the case of ***Union of India & Ors. vs. Dhanwanti Devi & Ors.***, [ (1996) 6 SCC 44]. He placed reliance on paragraph 11 of the said judgment. In fact that is a case arising not under the Land Acquisition Act but under the Jammu & Kashmir Requisitioning and Acquisition of Immoveable Property Act, 1968. Secondly, paragraph 11 of the judgment mentioned the contentions raised on behalf of the citizen that the act of taking possession of immoveable properties generally implies an agreement to pay interest on its consideration for deferred payment. That argument raised on behalf of the party was negated by the Apex Court on the ground that the interest on equitable consideration cannot be allowed if the statute under which the property was acquired expresses a contrary intention. It was observed that it is a well-settled principle that equity operates where the statute does not occupy the field and conversely when the statute occupies the field equity yields place to the statute. In my opinion, the aforesaid judgment is of no assistance to the applicants herein.

6. As against that, reliance is placed on behalf of the respondent-State on the judgment of the Supreme Court which has

considered the liability of the State to pay interest under the provisions of the Land Acquisition Act. Dealing with the said question it was observed in paragraph 13 of the judgment in the case of ***Prem Nath Kapur,*** (supra), as below:-

> "13. Thus we hold that the liability to pay interest on the amount of compensation determined under Section 23 (1) continues to subsist until it is paid to the owner or interested person or deposited into court under Section 34 read with Section 31. Equally, the libaility to pay interest on the excess amount of compensation determined by the Civil Court under Section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under Section 11 subsists until it is deposited into court. Proprio vigore in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till the date of payment or

> deposit in term of Section 34 or deposit into court in terms of Section 28, as the case may be."

It is not in dispute that the amount awarded to the applicants was deposited by the respondent-State in this Court, nor it is in dispute that the amount was not invested in any securities after it was deposited in this Court.

7. On behalf of the applicants however, it was argued that under Order XXIV of the Civil Procedure Code, the defendant is liable to give notice of the deposit of the amount in Court to the plaintiff. First of all the provisions of Order XXIV Rules 1 and 2 C.P.C. relied on behalf of the applicants are applicable in case of suits filed in the court and not in respect of deposits which are made under the provisions of the Land Acquisition Act. Secondly, the applicants had notice of the order of deposit passed in the Civil Application by this Court as a condition for grant of stay of the Award. Admittedly, the applicants had received the notice in the Civil Application taken out by the State for stay, in which order was passed by this Court staying the Award on the deposit of the amount of Award by the State in this Court within a period of six weeks. The argument that the applicants were given notice only of the order of the Court, but not of the actual deposit of the amount in the court is without any substance inasmuch as the applicants can be said

to have constructive notice, as on enquiry they could have learnt that the amount as a matter of fact was deposited by the State in this Court pursuant to the order of this Court. Moreover, if the amount had not been deposited in this Court, the stay would not have operated against the Award passed in favour of the applicants.

8. Lastly, reliance was placed on the amendment to the Appellate Side Rules of this Court dated 15th July, 2003, whereby clause (p) of Rule 4 in Chapter II was introduced, which reads as follows:-

> "(p) In the absence of Court's order, the Registrar is empowered to invest the amounts of pending matters, deposited in the name of the Registrar, in Nationalised Banks already on the High Court Panel, by calling upon such nationalised banks to submit offers, in order to invest the money in FDRS, on such terms and conditions as Registrar deems fit."

Apart from that it is argued that there is a general circular issued on the administrative side of this Court directing the office to invest the amounts which are deposited in this Court. But the fact remains that the amount was not deposited. Nothing prevented the applicants from seeking an order of this Court to invest the amount of deposit in a

nationalized Bank. It appears that the applicants assumed that the amount must have been invested. The aforesaid Clause (p) was introduced by way of amendment, with a view to see that the amount of deposit does not lie without investment. That rule was made for the benefit of the parties, but that does not mean that if for any reason the amount is not deposited, the parties can claim the interest thereon. Those directions were issued for the benefit of the parties in case they fail to seek order for the investment of the amount. It is no doubt true that normally the courts have been passing orders, or the office of the High Court has been investing the amount for the benefit of the party who succeeds in the appeals. But in order to get the benefit of investment or interest on investment the parties should obtain such order from the Court. It is a well-settled principle of equity that equity helps the diligent and not the indolent.

9. Lastly, it is argued that since the amount was deposited in the Public Ledger Account, the State gets benefit out of that as the amounts deposited in the said account have been utilized by the State and, therefore, the State must pay the interest on the said amount. No doubt the deposits made in this court are credited to the said account. However, there is nothing on record to show that the amount deposited in this case was utilized by the Government.

10. In view of the clear judgment of the Supreme Court

in the case of ***Prem Nath Kapur,*** (supra), the State cannot be held liable to pay the amount of interest to the applicants.

11. In the result, the application is dismissed.

**S.S. PARKAR, J.**

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